**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA**

WILLIE REYNOLDS,   )
)
                Petitioner,   )
)
        v.   )   6:93CV357
)   CR-90-54-01-WS
UNITED STATES OF AMERICA,   )
)
                Respondent.   )
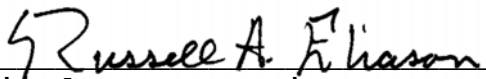

RECOMMENDATION OF MAGISTRATE JUDGE ELIASON

Petitioner has filed Rule 60(b) motions for relief from judgment based on subsequent Supreme Court decisions and for reconsideration of orders entered in the 1990's. Rule 60(b) provides for relief from final judgment in a limited set of circumstances, including fraud, mistake, and newly discovered evidence, as well as the catchall provision of Rule 60(b)(6)—any reason justifying relief from judgment. This, however, requires the Petitioner to show some defect in the integrity of the federal habeas corpus proceedings, as opposed to merely seeking to reargue grounds previously presented because, otherwise, such a motion would be presenting a new claim and be barred by 28 U.S.C. § 2244(b). Gonzalez v. Crosby, 545 U.S. 524 (2005). That is, merely arguing the court erred in denying relief based on recent court decisions will be barred. Id.

A claim based on a new and retroactive rule of constitutional law must be processed in accordance with 28 U.S.C. § 2244 through a Section 2255 motion or an application to file a successive petition addressed to the court of appeals. Id. Even if the

petitioner were raising some non-merit issue, like the statute of limitations, a prior ruling, even if erroneous, may not be disturbed except in extraordinary circumstances. And, in that instance, the petitioner must show diligence in having pursued the claim. <u>Id.</u> The delay in this case would doom any request for relief.

Petitioner's submissions are merely a rehashing of arguments previously presented, and citation to more recent Supreme Court decisions. Therefore, Petitioner is not entitled to relief under Rule 60.

IT IS THEREFORE RECOMMENDED that Petitioner's motions for relief from judgment and for reconsideration (docket nos. 3-5) be denied.

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United States Magistrate Judge

June 19, 2007

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